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Letter dated 1 October 2002 from the Permanent Representative of Colombia to the United Nations addressed to the Secretary-General

On behalf of the Government of Colombia, in its capacity as Pro Tempore Secretariat of the Andean Community, I have the honour to transmit to you, herewith, the Andean Charter for the Promotion and Protection of Human Rights (see annex).

I should be grateful if you could have it circulated as a document of the fifty-seventh session of the General Assembly, under agenda item 109.

(*Signed*) Alfonso **Valdivieso**
Ambassador
Permanent Representative

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Annex

Andean Charter for the Promotion and Protection of Human Rights

The Presidents of Bolivia, Colombia, Ecuador, Peru and Venezuela, meeting as the Andean Presidential Council and on behalf of the peoples of the Andean Community:

Inspired by the thinking of the Liberator, Simón Bolívar, who, in his Address to the Constituent Congress of Bolivia, proclaimed that it is a prime desire of all peoples to attain possession of their rights, to exercise political virtues and to enable each individual to acquire the luminous talents and enjoyment that belonging to the human race essentially entails;

Convinced that human rights are inherent to all human beings, and that all are free and equal in dignity and rights;

Considering that the internal legal order of States and international human rights law must provide continuing and complementary protection for human rights;

Committed to respecting and implementing the Charter of the United Nations, the Charter of the Organization of American States, the American Convention on Human Rights — Pact of San José, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights — Protocol of San Salvador, the Inter-American Democratic Charter and other international human rights instruments to which the Andean nations are States Parties;

Determined to defend the objectives and principles set forth in the Universal Declaration of Human Rights, the American Declaration on the Rights and Duties of Man and the United Nations Declaration on the Right to Development;

Recognizing the contribution of the Andean Parliament and, in particular, the principles set forth in the Andean Social Charter adopted on 30 September 1994;

Committed to expanding the increasingly dynamic role played in today's world by the Andean Community, a conglomerate of peoples united by the awareness of a shared past and geography and united in the search for historic goals that will affirm and extend the roots and traditions of their identity;

Intent on consolidating and promoting Andean unity based on recognition of the diversity of their territories, peoples, ethnic groups and cultures, and in the firm belief that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing;

Bearing in mind the recommendations of the Andean Subregional Seminar "Democracy and Human Rights", held in Quito in August 2000, concerning the drafting of an Andean Charter for the Promotion and Protection of Human Rights and cooperation to strengthen the observance of human rights in the Andean region;

Taking note of the valuable contributions derived from the consultations carried out in preparation for this Charter, with Andean Community bodies — particularly the contributions from the Court of Justice of the Andean Community and the Andean Labor Council — and representatives of civil society in the five Andean countries;

Determined to help build a world that is both supportive and respectful of human diversity based on the promotion and protection of human rights, and to foster political, economic and social development in their countries, the focus and ultimate goal being the welfare of the human being;

In accordance with the mandates of the Act of Carabobo, of 24 June 2001, and of the Declaration of Machu Picchu, of 29 July 2001, concerning democracy, the rights of indigenous peoples and the fight against poverty, whereby the Presidents of the Andean countries requested the Andean Council of Ministers for Foreign Affairs to prepare a draft Andean Charter for the Protection and Promotion of Human Rights that would set forth the principles and central issues of community policy on the subject;

Intent on jointly proclaiming the principles, objectives and commitments of the Andean Community regarding the promotion and protection of human rights;

Have agreed as follows:

Andean Charter for the Promotion and Protection of Human Rights

Section I
General principles

Article 1. The member States of the Andean Community recognize that human rights are inherent in the nature and dignity of everyone.

Article 2. They recognize that all human rights must be enforceable and they reaffirm their pledge to respect and enforce the human rights and fundamental freedoms set forth in international instruments and in national legislations, and to adopt the necessary legal and administrative measures to prevent and investigate actions that may constitute violations of human rights, to ensure the effectiveness of constitutional and legal remedies, to try and punish those responsible for such violations and to compensate the victims fully in accordance with the law.

Article 3. They affirm the principle that all human rights and fundamental freedoms are universal, indivisible, interdependent and interconnected and that, consequently, equal and decisive attention must be given to the application, promotion and protection not only of civil and political rights but also of economic, social and cultural rights and the right to development.

Article 4. Within the framework of respect for human rights, they reiterate the obligation and commitment of the countries of the subregion to preserve, protect and defend democracy, as established, inter alia, in the Riobamba Code of Conduct, the Additional Protocol to the Cartagena Agreement "Andean Community Commitment to Democracy" and the Inter-American Democratic Charter.

Article 5. They reiterate the will of the Andean Community member States to accept the decisions of the Inter-American Court of Human Rights and, furthermore, to adopt a constructive attitude and to give a favourable reception to the decisions and recommendations of regional and global non-jurisdictional mechanisms, when applicable, pursuant to relevant human rights treaties and constitutional provisions.

Article 6. They reaffirm their pledge to promote conditions favourable to universal observance and strengthening of systems for the protection of human rights, by signing, ratifying and/or acceding to international human rights instruments and by bringing national legislations into line with international human rights standards.

Article 7. They emphasize that civil society must be encouraged to participate in the preparation and execution of member States' national action plans and programmes in favour of the observance of human rights.

Article 8. They declare that every person, whether a national or a foreigner, within the territory of member States of the Andean Community is entitled to the human rights and fundamental freedoms set forth in international human rights law and in pertinent national legislation.

Article 9. They recognize the right of everyone to file reports, complaints or petitions concerning violations of human rights and fundamental freedoms with judicial organs, ombudsmen and/or pertinent administrative bodies, and to be heard as provided for in national legislations; furthermore, they reaffirm their commitment to support judicial organs and ombudsmen within the sphere of their jurisdiction.

Section II
Discrimination and intolerance

Article 10. They reaffirm their decision to combat all forms of racism, discrimination, xenophobia and any kind of intolerance or exclusion of individuals or communities based on race, colour, sex, age, language, religion, political opinion, nationality, sexual orientation, immigration status or any other condition, and decide to promote national legislations that penalize racial discrimination.

Article 11. Educational plans and programmes on human rights will be strengthened in order to promote a social culture based on tolerance, respect for differences and non-discrimination.

Article 12. They agree to undertake the necessary actions to protect human rights of minorities and to combat any act of discrimination, exclusion or xenophobia directed against, and affecting, them.

Section III
Democracy and human rights

Article 13. The Andean peoples have a right to democracy and their Governments have an obligation to promote and defend democracy, in order to achieve full exercise of all civil, political, economic, social and cultural rights, and the right to development.

Article 14. They reiterate their commitment to the contents of the Inter-American Democratic Charter and of resolution 2002/46 of the United Nations Commission on Human Rights concerning "Further measures to promote and consolidate democracy", especially regarding the essential elements of democracy: respect for human rights and fundamental freedoms, freedom of association, freedom of expression, of opinion, of access to power and the exercise thereof in accordance

with the rule of law; the holding of periodic free, fair and impartial elections based on universal suffrage and secret balloting as an expression of the will of the people; a pluralistic system of political organizations and parties; the permanent, ethical and responsible participation of citizens in the political life of their countries; the separation and independence of powers; transparency and accountability of public administration and a free, independent and pluralistic press.

Article 15. They confirm their accession to the Andean Community Commitment to Democracy, signed in Oporto in 1998, which was to become the Andean democratic clause.

Article 16. They pledge to uphold democratic order in the Andean region, convinced that the observance of democratic values will safeguard the interdependence and mutual reinforcement of democracy, development and respect for human rights and fundamental freedoms.

Article 17. They reiterate their commitment to the Inter-American Democratic Charter (2001), affirm that the observance of democratic order is an indispensable guarantee for the effective exercise of human rights and fundamental freedoms and, consequently, undertake to adopt all possible measures to strengthen it.

Article 18. They recognize the right of every citizen, man or woman, of the Andean Community Member States to elect and to participate in the elections of the Andean Parliament, which shall be held through free, direct and secret universal suffrage.

Section IV
Civil and political rights

Article 19. They reaffirm their commitment to respect and safeguard civil and political rights, in particular the right to life and personal integrity, as set forth in the Covenant on Civil and Political Rights and international instruments on the subject as well as constitutional norms of Member States.

Article 20. They will promote and protect freedom of thought and of opinion and expression and, in particular, ensure that the media can operate freely without interference from political groups, the public or from private pressure groups; access to electronic information media; and access of individuals to information that government authorities and private corporations may have on them, as prescribed by law.

Article 21. They will protect the right of everyone to seek asylum, pursuant to national and regional regulations in effect, and to enjoy its benefits in the event such asylum is granted.

Article 22. They renew the commitment of the Andean Community Member States to implement the provisions of the International Covenant on Civil and Political Rights and of the American Convention on Human Rights concerning the safeguarding of human rights during periods that are officially declared "states of emergency", due to exceptional situations.

Article 23. They will, with the participation of competent public entities and civil society, launch action plans designed to prevent and eliminate, and also to investigate, try and punish, crimes against humanity, including torture and any other

cruel, inhuman or degrading treatment or punishment, forced disappearances and extrajudicial executions.

Section V
Economic, social and cultural rights

Article 24. They reaffirm their commitment to respect and enforce the rights and obligations set forth in the International Covenant on Economic, Social and Cultural Rights and, in particular, to take steps, either individually or with international assistance and cooperation, within the limits of their resources, to progressively attain, through the appropriate means, the full exercise of the human rights recognized in the Covenant, including the right:

1. To have the opportunity to make a living through freely chosen or accepted work;

2. To enjoy just and satisfactory working conditions;

3. To form and join trade unions and to enjoy other labour rights;

4. To social security;

5. To protection and assistance for the family;

6. To an adequate standard of living for the individual and the families, including the right to adequate food, clothing and housing, and to the continuous improvement of their living conditions;

7. To the highest attainable standard of physical and mental health;

8. To education;

9. To culture and to enjoy the benefits of scientific advances and intellectual production.

Article 25. They will promote and protect the rights and guarantees of workers, in accordance with national legislation, international human rights law and labour standards issued by the International Labour Organization.

Article 26. They highlight the relevance of the provisions of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights — Protocol of San Salvador — for the exercise of these rights in the Andean region and reiterate their commitment to implement the provisions of the Protocol in conjunction with those of other international instruments on the subject, and of their national legislations.

Article 27. They endorse the drafting of an optional protocol to the International Covenant on Economic, Social and Cultural Rights to enable the Committee on Economic, Social and Cultural Rights to receive complaints from individuals or groups of individuals regarding alleged violations of any of the rights set forth in the Covenant.

Section VI
Right to development

Article 28. They undertake to comply and to enforce compliance with the principles set forth in the Declaration on the Right to Development (1986) of the United Nations General Assembly and in the international instruments containing provisions on this matter.

Article 29. In order to promote the right to development in the Andean sphere, they will give priority consideration to the following issues:

1. Creation of favourable conditions and design of national and regional development policies with a view to progressively improving the social well-being of the Andean population, on the basis of its active, free and significant participation in development, with a view to the equitable sharing of the benefits thereof.

2. National action and regional cooperation to eliminate the obstacles to development and the fight against poverty, extreme poverty and inequity; promotion of an international economic order that addresses individual rights and the needs, conditions and aspirations of Andean countries and their access to the benefits of the global society.

3. Promotion of subregional, regional and international cooperation so that the outcome of scientific and technological progress may be directed at the economic and social development of nations and the strengthening of international peace and security, pursuant to the principles of the Charter of the United Nations.

4. Concerted action of Andean countries, in cooperation with other countries and groups of countries, to counterbalance the effects of the volatility of financial markets, ensure free access of our goods and services to international markets, and promote the elimination of dumping or subsidies and other practices and policies that impede free trade.

5. Promotion of participation of the population in the decision-making process aimed at its sustainable human development.

6. Representation in international financial entities so that, when structural adjustment policies and other measures related to foreign debt, are formulated account is taken of their impact on the promotion and protection of human rights, in particular economic, social and cultural rights and the right to development, keeping in mind the conditions and social needs of the countries.

7. National and regional governance of Andean countries so that: (a) international financial bodies and debtor countries consider effective mechanisms to ease the foreign debt servicing burden, when required by the situation of the country concerned; and (b) creditor and debtor countries come to understandings to deal with the negative impact that foreign debt servicing may under certain circumstances have on the right to development.

8. Importance of conservation and protection of the environment and appropriate use thereof as a factor of sustainable development, particularly in relation to linking foreign debt and the environment.

Section VII
Right to safe and protected environment

Article 30. They recognize the right of everyone and of societies to a safe and protected environment.

Article 31. They declare that the promotion and defence of the right to a safe and protected environment within the human rights regulatory framework requires taking into account the instruments of international environmental law inter alia, the Convention on Biological Diversity, the Convention on Climate Change, the Convention to Combat Desertification, and in particular, the Regional Biodiversity Strategy for Countries in the Andean Tropics adopted by the Ministers for Foreign Affairs.

Section VIII
Rights of indigenous peoples and communities of African descent

Article 32. They affirm that the Andean Community Member States are multi-ethnic and multicultural. Diversity is a cornerstone and a basic feature of such societies and also a source of wealth; consequently, they reaffirm the right of all peoples and communities in the Andean countries to the preservation and development of their own identities and the consolidation of each country's national unity based on the diversity of their societies.

Article 33. They particularly undertake to promote programmes in favour of intercultural exchange, understood as the preservation and development of the ancestral identities of indigenous peoples and communities of African descent, through the fostering of social spaces for contact, dialogue and interaction between such peoples and communities and the rest of society in Andean countries, based on the reaffirmation and observance of their own identities and cultures.

Article 34. They will adopt effective measures so that educational systems — whatever the level and modality — reflect the values inherent to the cultural and ethnic diversity of Andean countries and incorporate into their curriculums notions and practices that foster an attitude of respect for diversity and advance the purposes of intercultural exchange.

Article 35. They will encourage educational systems to foster intercultural exchange through the development of specific programmes for indigenous peoples — such as bilingual intercultural education — and promote the establishment of study programmes on indigenous and Afro-descendant cultures.

Article 36. They reiterate their pledge to respect and enforce the rights and obligations set forth in international instruments aimed at promoting and protecting the human rights of indigenous peoples and of communities of African descent, in particular the Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization.

Article 37. They recognize that indigenous peoples and communities of African descent, in addition to the human rights their members are entitled to as citizens in their own right are also entitled as groups of people with ancestral roots, to

collective rights, the common exercise of which promotes their historical continuity, the preservation of their identity and their future development.

Article 38. They also recognize that indigenous peoples and communities of African descent, within the framework of national legislations and regulations on human rights, are entitled to maintain and develop their identities and customs in the cultural, spiritual, political, economic and legal spheres; to own and possess the lands or territories they traditionally occupy; to not be displaced from them and, if they are, to return to them; to preserve their own forms of social organization, exercise of authority and administration of justice; to develop and maintain their tangible and intangible cultural heritage; and to protection of their ancestral collective knowledge and exercise of their traditional practices.

Article 39. They further recognize the right of indigenous peoples and communities of African descent, within the framework of national constitutions and legislations and international human rights law, to preserve and promote their traditional practices for the conservation and sustainable use of biological diversity; to participate in the sustainable use, management and enjoyment of natural resources found within their lands or territories; to be consulted about any decisions made concerning the exploitation of non-renewable natural resources found within their lands or territories and any activity affecting the environment and their life styles; to share, whenever possible, the benefits derived from activities related to the management of natural resources within their land and territories; to receive equitable compensation for any damage sustained as a result of such activities; to be consulted and to participate in the drafting, implementation and evaluation of development plans concerning them; and to formulate their own sustainable development plans and take steps to obtain from the States resources for their funding and international assistance.

Article 40. They undertake to adopt the International Declaration on the Rights of Indigenous Peoples currently being drafted within the framework of the United Nations, and the Inter-American Declaration on the Rights of Indigenous Peoples, currently being drafted by OAS, and express their support for the work of the Permanent Forum on Indigenous Issues of the United Nations Economic and Social Council.

Article 41. Recalling that the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, 2001) pointed out that indigenous peoples and communities of African descent have been the victims of discrimination, slavery and poverty, they express their commitment to formulate, promote and execute at the national, regional and international levels, strategies, programmes and policies to promote equitable social development and the full exercise of such people's human rights.

Section IX
Rights of groups object of special protection

A. Rights of women

Article 42. They reiterate their commitment to respect and enforce the rights and obligations set forth in the International Convention on the Elimination of All Forms of Discrimination against Women (1981) and its Optional Protocol (1999), the

Convention on the Political Rights of Women (1954), the Inter-American Convention to Prevent, Sanction and Eradicate Violence against Women (1995) and other international and regional instruments on the subject.

Article 43. They will address the following main themes with a view to improving the promotion and protection of the human rights of women in their respective jurisdictions and in the Andean sphere:

1. Protection of women against discrimination — in the public and private spheres — with a view to safeguarding their human rights, in particular their right to life, integrity and personal safety, personal freedom, political participation, work, health and the exercise of sexual and reproductive rights, social security, adequate housing, education, ownership and participation in the economic life of society, and access to effective legal and administrative remedies when their rights are violated.

2. Adoption of programmes to actively promote the participation of women in the public and private spheres of society, incorporation of the gender perspective in public policies and promotion of this perspective in the private sector.

3. Actions to eradicate all forms of violence against women; to fight against impunity of those that commit such violence in public and in private; and to develop mechanisms to offer effective compensation to victims of gender-related violence.

4. Protection against sexual harassment and all forms of sexual and labour exploitation; slavery, smuggling, trafficking of women and girls — particularly for sexual exploitation purposes; and incitement to and forced prostitution, forced pregnancy and sterilization.

5. Actions against all forms of discrimination against women in connection with marriage, consensual unions and family relations, especially with regard to the rights of women during marriage and consensual unions and upon dissolution thereof, and with respect to housework, child-rearing, exercise of sexual and reproductive rights and the property system.

B. Rights of children and adolescents

Article 44. They reiterate their commitment to respect and enforce the rights and obligations set forth in the International Convention on the Rights of the Child (1989), its optional Protocols on the involvement of children in armed conflict (2000) and the sale of children, child prostitution and child pornography (2000), and other international instruments to promote and protect the human rights of children and adolescents.

Article 45. They will address the following main themes with a view to improving the promotion and protection of the human rights of children and adolescents in their respective jurisdictions and in the Andean sphere:

1. Attainment of equal rights of children and adolescents with respect to other members of society, in accordance with pertinent legislation, and the fight against all forms of discrimination against children based on race, colour, sex, language, religion, political opinion, nationality, age, economic and social condition, immigration status of the child or its parents, and any other condition.

2. Effective realization of the higher interest of children set forth in the Convention on the Rights of the Child, in the legal and institutional spheres.

3. Protection of the rights of children and adolescents to an identity and to have such identity kept in confidence in those cases contemplated by the legislation; to have a name and a nationality; to have a legal representative; to know, to the extent possible, the identity of their parents and to be cared for by them; and to a say in matters that concern them.

4. Protection of the fundamental rights of children and adolescents deprived of liberty, in accordance with national and international regulations on the subject.

5. Protection against slavery, trafficking, illicit transfer and holding of children and adolescents abroad and against illegal or arbitrary deprivation of their liberty.

6. Eradication of child labour following the elimination of all forms of labour exploitation based on the conventions of the International Labour Organization and applicable national legislations.

7. Protection against all forms of exploitation, sexual abuse and violence, including domestic violence, to which children may be subject, and implementation of the provisions of the optional Protocol to the Convention on the Rights of the Child concerning the sale of children, child prostitution and child pornography (2000).

8. Combating impunity of those who affect the rights of children, both in public and in private; and development of programmes to offer effective compensation to victims of exploitation and violence.

9. Prevention of, and punishment of those responsible for, recruitment and involvement of children and adolescents in any armed conflict; respect for the minimum recruiting age of 18 years pursuant to the provisions of the optional Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflict (2000).

10. Adoption of a comprehensive social protection system aiming at addressing the economic, social and cultural rights of children and adolescents, formulated and executed with the help of civil society organizations involved in the promotion and protection of the rights of children.

11. The right of adolescents to receive adequate education and information for responsible sexuality.

C. Rights of older adults

Article 46. They reiterate their commitment to respect and enforce the rights and obligations designed to promote and protect the human rights of older adults.

Article 47. They will address the following main themes with a view to improving the promotion and protection of the human rights of older adults in their respective jurisdictions and in the Andean sphere:

1. Protection of older adults against all forms of discrimination and violence, including domestic violence.

2. Provision of appropriate care for older adults in public and private establishments and facilities.

3. Participation of older adults and organizations of older adults in decision-making on public issues that concern them.

4. Effective protection of the right of older adults to social security, particularly in connection with the rights and guarantees related to retirement.

5. Promotion of the participation and integration of older adults in society.

D. Rights of persons with disabilities

Article 48. They reiterate their commitment to respect and enforce the rights and obligations set forth in the United Nations Declaration on the Rights of Disabled Persons (1975); in international instruments designed to promote and protect the human rights of persons with disabilities, such as the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999); and in other declarations, resolutions and agreements on social protection adopted within the framework of the United Nations, the International Labour Organization, the World Health Organization and the Pan American Health Organization.

Article 49. They will address the following main themes with a view to improving the promotion and protection of the human rights of persons with disabilities in their respective jurisdictions and in the Andean sphere:

1. Protection against all forms of discrimination and violence against persons with disabilities.

2. Prevention of the circumstances that give rise to disabilities, through education, safety in the workplace and public information.

3. Realization of the right to social security and health of persons with disabilities.

4. Fostering of personal development through programmes that address the particular needs of persons with disabilities.

5. Integration of persons with disabilities in society through work, education and full participation in their respective national communities.

6. Provision of timely assistance, medical treatment, rehabilitation, education, professional training and personal attention to persons with disabilities, with a view to enabling them to enter the working world with dignity and on equitable conditions with respect to other workers.

7. Informing people about the rights of persons with disabilities so as to eliminate prejudice, stereotypes and discrimination about such persons.

8. Preparation of architectural design programmes in urban, rural and remote areas so as to make it easier for disabled persons to move around and use public spaces.

E. Rights of migrants and their families

Article 50. They reiterate their commitment to respect and enforce the rights and obligations set forth in international instruments designed to promote and protect the human rights of migrants and their families; and affirm their intention to continue their efforts to make the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) part of their national legislations, and will give priority to considering the possibility of signing, ratifying or acceding to it.

Article 51. They will address the following main themes with a view to improving the promotion and protection of the human rights of migrants and their families in their respective jurisdictions and in the Andean sphere:

1. Respect for the right of migrants and their families to migrate, work, transit freely and move about and to choose their place of residence freely, in accordance with national legislations and community regulations.

2. Prevention and elimination of discrimination against Andean migrants and their families in access to public education and health services, housing and lodging, social security and employment; and creation of information and assistance centres for migrants.

3. Provision of identity papers to migrants and their families, without discrimination based on race, colour, sex, age, language, religion, nationality, political opinion, sexual orientation and immigration status.

4. Reunification of migrants and their families in the country of destination and regularization of their immigration status through the appropriate legal and administrative means.

5. Protection of the family members of migrants, especially children, adolescents and older adults, who continue living in their countries of origin and have become separated from their family members as a result of the migration.

6. Joint action of the Andean Community countries to promote and protect the rights of migrants and their families in other countries and groups of countries, as well as in international and regional forums.

F. Rights of people with different sexual orientation

Article 52. They acknowledge that all persons, regardless of their sexual orientation or preference, have equal human rights.

Article 53. They will combat all forms of discrimination against individuals based on their sexual orientation or preference, in accordance with national legislations, and to this end, will pay special attention to preventing and punishing violence and discrimination against persons with different sexual orientation or preference, and to guaranteeing legal remedies for effective compensation for damages stemming from such offences.

G. Rights of internally displaced persons

Article 54. They reiterate their pledge to respect and enforce the relevant norms set forth in human rights instruments, international humanitarian law and international law with respect to refugees which are designed to protect persons who are forced or compelled to leave their homes or their habitual place of residence, in particular to avoid the effects of armed conflict, situations of generalized violence, massive violations of human rights or natural or man-made disasters, and who have not crossed over an internationally recognized State border.

Article 55. With a view to protecting the human rights of internally displaced persons in their respective jurisdictions and in the Andean sphere, they will address the following priorities:

1. They will monitor the application by public authorities of the United Nations "Guiding Principles on Internal Displacement" (1988), and work to incorporate them into the legislation of each country.

2. They will guarantee that internally displaced persons have equal rights with the other inhabitants of their countries, and will investigate, try and punish those that violate the rights and fundamental freedoms of displaced persons.

3. They will provide protection and humanitarian aid to internally displaced persons and/or facilitate the delivery of humanitarian aid by international or non-governmental organizations, in accordance with applicable international and national regulations.

4. They will endeavour to establish the conditions and provide means for the voluntary return of internally displaced persons, in safety and dignity, to their habitual place of residence, or their voluntary resettlement in other parts of the country.

H. Rights of persons deprived of liberty

Article 56. They reiterate their pledge to respect and enforce the rights and obligations set forth in international instruments with respect to persons who are deprived of their liberty.

Article 57. They will address the following main themes, with a view to safeguarding the human rights of persons who are deprived of their liberty:

1. Implementation of programmes designed to significantly improve living conditions in detention, penitential centres and prisons in each Member State, so that they conform to United Nations principles and regulations applicable to persons subject to any form of imprisonment or detention, in particular with regard to physical separation of those who have been convicted and those who are awaiting trial.

2. Adoption of measures to avoid violating the human rights of detainees by, inter alia, educating and training prison personnel on the subject, and by investigating, trying and punishing those who commit such violations.

3. Creation of programmes for the rehabilitation and social reinsertion of persons deprived of their liberty, attached to prisons and consideration of the possibility of

introducing in their legislation alternative penalties such as community work and community service.

4. Application of the principle of due process without unjustified delays as a matter of priority in the administration of justice, throughout the trial and at the sentencing, in accordance with the terms established in national legislations.

I. Human rights and the rights of refugees and stateless persons

Article 58. They reiterate their pledge to respect and enforce the rights and obligations set forth in international instruments designed to promote and protect the rights of refugees and stateless persons to which Andean Community Member States are party, in accordance with national legislations.

Article 59. They will address the following main themes, with a view to improving the promotion and protection of the human rights of refugees and stateless persons:

1. Protection of refugees and stateless persons against all forms of discrimination and violence on account of their race, colour, sex, language, religion, political opinion, nationality, sexual orientation, immigration status, age or any other condition.

2. Access to education, social and health services, housing and work, and the right to freedom of movement, expression and religion and to obtain proper documentation without any distinction whatsoever in the receiving country.

3. Effective enjoyment of their rights, in accordance with national legislation in particular the right to life, security, property, to an effective remedy when their rights are violated, respect for the standards of due process in the courts of the receiving country, to not be expelled — save in accordance with the law, but never to the country where their lives, security or liberty are at risk.

Section X
Other spheres of protection of human rights

Article 60. They recognize that the development of international human rights law leads to the consideration of other issues related to the promotion and protection of such rights, and that Andean Community Member States should encourage this evolution of the law in the national and international spheres and work together to advance the development of human rights regulations.

Section XI
Human rights and international humanitarian law

Article 61. They reaffirm their strong support for the rules of international humanitarian law set forth, inter alia, in the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977; reiterate their belief that these international instruments can ensure better protection for victims of international and non-international armed conflicts, particularly the civilian population. They urge the

parties in international and non-international armed conflicts to abide by the applicable rules of international humanitarian law.

Article 62. Within the context of the progressive development of international human rights law, they recognize the importance of its connection with international humanitarian law, in that the latter may be an instrument for interpreting the former, and they endorse the rules set forth in international conventions on these matters.

Section XII
Human rights promotion and protection mechanisms

Article 63. They declare that the Andean Charter for the Promotion and Protection of Human Rights is the first comprehensive declaration by the Andean Community on the subject of human rights in the Community sphere, and that it complements national, inter-American and universal regulations thereon. Any programme prepared within the framework of the provisions set forth in the Charter shall be coordinated with national activities, or those carried out through international cooperation by Member States in the Andean region.

National mechanisms

A. Administration of justice

Article 64. In order to promote and protect human rights in general, and the right to due process in particular, they shall take steps to ensure that Andean Community Member States have efficient, independent, impartial and autonomous systems for the administration of justice.

Article 65. They will endorse directly and, as appropriate, in coordination with each nation's judicial service, the execution of programmes designed to improve their justice administration systems, so as to, inter alia, promote the efficiency and transparency of legal procedures; combat acts of judicial corruption, unjustified delays in the administration of justice and abuse of pre-trial detention; and offer solutions to the situation of prisoners, who have not been sentenced.

Article 66. They highlight the important role of the administration of justice in each Andean Community Member State in the protection of human rights through the application of national laws and international instruments.

Article 67. They support, in accordance with national legislations, independent and autonomous administration of justice to investigate, try and punish those responsible for human rights violations and to order compensation for victims of such violations.

Article 68. They decide to promote legislative initiatives in order to bring national legislation into line with international human rights regulations and to offer judicial remedies at the national level for the protection of such rights.

Article 69. They recognize the right of every person to resort to international mechanisms for the protection of human rights and respect the subsidiary nature of such mechanisms.

B. Ombudsmen's offices

Article 70. They recognize the role of Ombudsmen's Offices as institutional guarantees for the protection of human rights, and commit themselves to respect the constitutive statutes and legal prerogatives of Ombudsmen's Offices.

Article 71. They recommend exchange of information and experiences among Andean Community Ombudsmen's Offices, in order to foster more effective management and coordination of their offices.

Article 72. They invite Ombudsmen's Offices to promote mechanisms that promote realization of the right of the people to be informed about the activities of public institutions, in accordance with the law and with the participation of organized civil society.

C. Human rights advocates

Article 73. They reiterate the commitment of Andean Community Member States to protect the human rights of human rights advocates and the legitimacy of their work, in accordance with the provisions of the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" (1999), and their will to cooperate with civil society in the promotion and protection of human rights within each country and at the regional level.

Article 74. They declare their commitment to respect the autonomy and independence of human rights advocates, supply them with the information to which they are legally entitled, to provide them with full protection for the performance of their activities when required, and to firmly and effectively investigate, try and punish all acts that threaten the fundamental freedoms and guarantees that protect human rights advocates and their organizations.

D. Human rights plans and programmes

Article 75. They welcome the recommendation of the World Conference on Human Rights, held in Vienna (1993), and of other international meetings and forums, that each country should have a national human rights plan.

Article 76. They declare their commitment to encourage the people and organizations of human rights advocates to participate in the drafting, implementation and follow-up of national human rights plans, and to issue their reports on the implementation of such national plans to public oversight institutions, civil society and the Andean Community Member States, through the General Secretariat.

Article 77. They encourage the efforts of Member States to obtain assistance bilaterally and from multilateral human rights bodies among them, the Office of the United Nations High Commissioner for Human Rights, in order to prepare national human rights plans and programmes or to update existing ones.

E. Human rights and law enforcement agencies

Article 78. They affirm that the full observance of human rights requires the necessary action of law enforcement agencies to ensure that citizen security and public order are implemented under the principle of legality and respect for human rights.

Article 79. They will establish channels of cooperation among national law enforcement agencies of Member countries, in order to develop activities aimed at promoting human rights values in such institutions and reaching their personnel about respect for the principle of legality, and, in the event of internal conflicts, about the rules of international humanitarian law.

International mechanisms

A. Cooperation with human rights treaty monitoring bodies

Article 80. They reaffirm their intent to submit in a timely manner the periodic reports that Andean Community Member Countries must present to the bodies that monitor implementation of international human rights treaties. They will encourage civil society to participate in the preparation and follow-up of reports.

Article 81. They will evaluate and, wherever pertinent, give consideration to the concluding observations made by the international human rights treaty monitoring bodies following examination of the periodic reports, and will disseminate the periodic reports and concluding observations as widely as possible.

B. Cooperation with the United Nations and Inter-American systems for the promotion and protection of human rights

Article 82. They will cooperate actively with the United Nations and Inter-American systems for the protection and promotion of human rights, and foster cooperation between the two.

Article 83. They highlight the importance of the recommendations of the Inter-American Commission on Human Rights and reiterate their commitment to comply with the decisions and resolutions of the Inter-American Court of Human Rights.

C. International Criminal Court

Article 84. In view of its significance for international human rights law, they highlight the entry into force of the Rome Statute establishing the International Criminal Court which, being supplementary and subsidiary to national jurisdictions, will contribute to the fight against impunity of those responsible for genocide, crimes against humanity, war crimes and aggression.

Article 85. They undertake to give favourable and prompt consideration to ratifying the Statute of the International Criminal Court, and will bring their national legislations into line with it.

Section XIII
Follow-up of the Andean Charter for the Promotion and Protection of Human Rights

Article 86. They agree to promote the principles and objectives of the Andean Charter for the Promotion and Protection of Human Rights through the mechanisms mentioned in this section; this does not preclude the possibility of including other follow-up ways and means through the pertinent Community channels.

Article 87. The Andean Council of Ministers for Foreign Affairs shall be the top community body in charge of the follow-up of subregional initiatives provided for in the Charter.

Article 88. The General Secretariat of the Andean Community shall provide the Andean Council of Ministers for Foreign Affairs with whatever assistance it requires in order to carry out the provisions of the preceding article.

Article 89. The Andean Council of Ministers for Foreign Affairs shall agree with the Andean Parliament on consultation mechanisms related to the contribution of this body to the implementation and follow-up of the Andean Charter for the Promotion and Protection of Human Rights.

Article 90. They invite the Ombudsmen from Andean Community Member States to follow up and monitor the implementation of the provisions of the Andean Charter relating to their powers and to meet in order to agree on the views and recommendations that they will submit to the Andean Council of Ministers for Foreign Affairs on the subject, through the General Secretariat.

Article 91. They invite civil society in Andean countries and, in particular, human rights advocacy organizations, to participate, in coordination with the General Secretariat and the Ministers for Foreign Affairs of Member States, in the follow-up activities of the Andean Charter for the Promotion and Protection of Human Rights.

Article 92. In order to follow up the Andean Charter for the Promotion and Protection of Human Rights and in addition to the activities set forth therein, the Andean Community countries shall organize regional programmes to disseminate the principles of the Andean Charter, foster an Andean culture of respect for human rights, in particular the rights of individuals and groups of individuals requiring special protection, and to encourage the development of international human rights law in new spheres, as provided for in section X of the Andean Charter.

Article 93. They recommend that national human rights plans and other programmes for the protection of human rights should take into consideration the content and provisions of the Andean Charter for the Promotion and Protection of Human Rights, and that they should, as far as possible, coordinate national activities with those derived from the implementation and follow-up of the Andean Charter.

Section XIV
General provisions

Article 94. Nothing in this Charter may be construed as limiting the enjoyment and exercise of any right or freedom recognized under the laws of any Member State or under the international human rights instruments in effect in those States.

Article 95. They hereby agree to adopt the Andean Charter for the Promotion and Protection of Human Rights in the Spanish language and to translate it into the main ancestral languages of the indigenous peoples of the Andean countries.

Section XV
Final provision

Article 96. They instruct their Ministers for Foreign Affairs, in light of the progressive evolution of international human rights law, to review the contents of this Charter every four years with a view to updating and improving it.

The Andean Council of Ministers for Foreign Affairs shall decide in due course on the binding nature of this Charter.

Done and signed in Guayaquil, on 26 July 2002.

Jorge **Quiroga Ramirez**
President of the Republic of Bolivia

Andres **Pastrana Arango**
President of the Republic of Colombia

Gustavo **Noboa Bejarano**
President of the Republic of Ecuador

Alejandro **Toledo Manrique**
President of the Republic of Peru

Hugo **Chavez Frias**
President of the Bolivarian Republic of Venezuela

United Nations A/C.3/57/3

General Assembly

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Fifty-seventh session
Third Committee
Agenda item 100
Crime prevention and criminal justice

Letter dated 11 October 2002 from the Permanent Representative of Lithuania to the United Nations addressed to the Secretary-General

I have the honour to submit herewith the country report on trafficking in human beings of the Republic of Lithuania (see annex). I would be grateful if the text of the present letter and its annex were distributed as a document of the fifty-seventh session of the General Assembly, under agenda item 100, entitled "Crime prevention and criminal justice".

(*Signed*) Gediminas **Šerkšnys**
Ambassador
Permanent Representative

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Annex to the letter dated 11 October 2002 from the Permanent Representative of Lithuania to the United Nations addressed to the Secretary-General

Lithuania: country report on trafficking in human beings

Introduction

One of the most important objectives of the Government of the Republic of Lithuania is to implement measures for the prevention of trafficking in human beings, which are the following: complex measures for eliminating the causes of these phenomena, modernisation and strengthening of the system of law enforcement and other state institutions, supporting of activities of non-governmental organisations, and disrupting of networks of criminal structures which are engaged in trafficking in people and organisation of prostitution, child abuse and commercial exploitation.

Legal instruments

Legislation of the Republic of Lithuania stipulates criminal liability for trafficking in people and for other crimes related with trafficking in people (e.g. procuring, illegal transportation of people through the national border).

On 2 July 1998, the Law Amending the Criminal Code of Lithuania was adopted. It supplemented the Criminal Code with the Article 131^3, which establishes the liability (from 4 to 8 years of deprivation of freedom) for trafficking in people – selling or purchasing of a person with an aim to sexually exploit him/her, force to become engaged in prostitution or gain personal profit from him/her, as well as smuggling of a person for the purposes of prostitution to Lithuania or beyond its borders (Paragraph 1 of the Article), the liability (from 6 to 12 years) for the same act committed repeatedly or with respect to a minor, or the act committed by a group of people in prior agreement or by an especially dangerous persistent offender (Paragraph 2 of the Article). The said Law also amended Articles 8^1 and 35 of the Criminal Code of Lithuania, according to which trafficking in people is placed under major crimes. According to the Article 131^3 "Trafficking in People" of the Criminal Code of the Republic of Lithuania, 3 criminal cases where initiated in 1999, 4 - in 2000, 14 – in 2001, and 18 – during eight months of 2002.

The new Criminal Code of the Republic of Lithuania, approved on 26 September 2001, also stipulates liability for trafficking in people. Procuring is an act, which, according to Paragraph 3 of the Article 239 of the Criminal Code of the Republic of Lithuania, is punished by imprisonment for a term of up to 5 years. The act, which is punishable according to Paragraph 4 Article 239 of the Criminal Code of Lithuania, i.e. engaging a minor or a person who is dependent materially, or based on the position he occupies or in other ways, into prostitution, as well as engaging a person in prostitution by way of blackmailing or deceit or using psychological or physical violence, is punished by a term from 3 to 7 years of deprivation of freedom. According to Paragraph 3 of the Article 239 of the Criminal Code of the Republic of Lithuania, no criminal cases were initiated during 1995 – 1997, in 1998, 4 cases were initiated, in 1998 – 4, in 1999 – 15, in 2000 – 9, and in 2001 – 2 criminal cases.

A number of articles of the Criminal Code of the Republic of Lithuania provide for criminal liability for illegal crossing of the national border and illegal transportation of persons across the national border. Under Article 82 illegal crossing of the border inflicts the following penalties: up to 3 years of imprisonment, and up to 5 years for aggravated circumstances. Article 82^1 sets criminal liability for illegal transportation of persons to the Republic of Lithuania or their hiding and establishes the following penalties: up to 10 years of imprisonment, and up to 15 years for aggravated circumstances.

Enactment on 1 June 1999 of the new Article 82^2 of the Criminal Code of the Republic of Lithuania was one of the measures to prevent trafficking in people and the spread of illegal work related to it. This Article established criminal liability for transporting a Lithuanian citizen to a foreign country with the purpose of asking for refuge, seeking illegal employment or staying in that foreign country illegally for other reasons or on the grounds of a deceitful promise to arrange a legal status. Penalties range up to 6 years of imprisonment, while in cases with aggravated circumstances – 4 to 8 years of imprisonment.

International Conventions

The Government of the Republic of Lithuania seeks to pool efforts of law enforcement and other state institutions as well as of non-governmental organisations in order to implement provisions of laws and international agreements of the Republic of Lithuania related to trafficking in people. On 3 July 1995, it ratified the UN Convention on the Rights of the Child, and on 10 September 1995 – the UN Convention on Abolishment of All Forms of Discrimination Against Women. According to the Article 6 of the latter Convention, the Government is obliged to take all necessary measures in order to stop all sorts of trafficking in women and the use of women for prostitution.

On 13 December 2000, the Republic of Lithuania signed the UN Convention Against International Organised Crime. Under the decree as of 8 February 2002, the President of the Republic of Lithuania submitted this Convention for the Seimas of the Republic of Lithuania to ratify. On 25 April 2002, the Protocol on prevention, suspension of trafficking in people, women and children in particular, and punishment for the engagement in this activity, which supplemented this Convention was signed. Moreover, in Lithuania recommendations of the Committee of Ministers of the Council of Europe and other acts of the international law, which primarily served as a basis when preparing the Programme of Control and Prevention of Trafficking in People and Prostitution for 2002 – 2004, are being implemented.

Government Programmes

Taking into consideration the relevance of the problem of trafficking in people and implementing the Law Approximation Action Plan and the ACQUIS Implementation Action Plan of Lithuania's EU Accession Programme (National Programme for the Adoption of the ACQUIS), a Programme on the Control and Prevention of Trafficking in People and of Prostitution for the period 2002 – 2004 was prepared. Trafficking in people and prostitution are social phenomena, thus, it is planned to organise a system of their control and prevention that covers a complex of various measures in the field of education, public health and social-economical area.

Upon implementation of this programme, the fight against specialised criminal gangs will be more effective, a system of social assistance which limits engagement of new persons into prostitution will be developed, conditions for social, psychological, and legal assistance for victims of prostitution and trafficking in people will be created, the search system of missing people will be enhanced, a system of information supply on prevention, research, and disclosure of human trafficking will be developed, international cooperation will be expanded, and non-governmental organisations will be supported. In addition, a programme of preventive education at schools will be carried out, and a computerised data base on people detained with false documents, suspected of procuring, and deported from both foreign countries and the Republic of Lithuania will be compiled at the State Border Guard Service under the Ministry of the Interior, and recommendations of the international legal acts and international organisations in the field of control of trafficking in people and prostitution will be implemented.

Devoting a lot of attention to the fight against causes of trafficking in people, Lithuania has prepared the Poverty Reduction Strategy, for the implementation of which a corresponding programme is being developed and which will cover particular measures. The Government of the Republic of Lithuania has approved the Programme for the Increase of Employment, which is currently being implemented.

In Lithuania the initiative for integrating and reorienting persons who have been subjected to trafficking in people falls to governmental and non-governmental institutions. Aid is provided by the following entities: in social issues (employment, professional orientation) by the Social Security and Labour Ministry; legal and protection issues – by the Police Department under the Ministry of Interior and the Ministry itself; healthcare issues – by the Ministry of Health and the AIDS Centre of Lithuania. Reintegration issues are dealt with by the Foreigners' Registration Centre of the State Border Guard Service under the Ministry of Interior, within the scope of its competence.

Government co-ordination

The co-operation (as well as the exchange of information) within the country takes place between various institutions and organisations on various levels. The direct fight against trafficking in people is carried out by special police divisions (preventive activity is carried out by special divisions of Organised Crime Investigation Service of the Criminal Police Bureau of Lithuania).

The co-operation (as well as the exchange of information) in the field of control and prevention of trafficking in people is as follows: in the police system (between police divisions); between law enforcement institutions (on the basis of the agreement between the Prosecutor's Office, police, the State Security Department, Special Investigation Services, Financial Crimes Investigation Service under the Ministry of the Interior, State Border Guard Service under the Ministry of Interior, customs, and other); among law enforcement institutions and non-governmental organisations; among ministries (Interior, Justice, Social Security and Labour, Health Care, Foreign Affairs, Education and Science, and other); among institutions of law enforcement and public authority.

Co-operation with NGO's

In Lithuania there is a set of NGOs offering social, medical, psychological and other aid to persons who have become subjected to trafficking. Among them are: the Aid Centre for Families of Missing People, Vilnius Women's Centre, Crises centre, etc.

Awareness raising programmes

Education takes a special position in the system of preventive measures of trafficking in people. All international legal acts dealing with the prevention of trafficking in people highlight education (information) as one of the necessary and the most effective preventive measures against trafficking in people, i.e. informing people about the threats of people trafficking as well as about methods and ways to avoid them makes it possible to minimize engagement of new individuals (minors, unemployed people, girls and women experiencing violence and sexual abuse at home, and others) into trafficking in people and forced prostitution as well as withdrawal of the already involved people from trafficking and forced prostitution. Acknowledging the importance of education (information) as one of the most significant and effective preventive measures against trafficking in people, a range of various measures is established in Chapter II "Education" of the Annex 1 of the Programme of Control and Prevention of Trafficking in People and Prostitution for 2002 – 2004.

The non-governmental organisation the Aid Centre for Families of Missing People installed a free-of-charge telephone line for potential victims of trafficking in people, gave 23 lectures at the educational institutions of Lithuania as well as for social workers working with people coming from groups of higher risk, prepared and published 32 information posters on the topic "Trafficking in people takes place in Lithuania as well", organised 4 international and 2 domestic conferences on problems of victims of trafficking in people, published and distributed 87,000 information leaflets warning about the threats of looking for illegal work abroad, etc.

In 2001, in Lithuania the International Organisation of Migration carried out an informational campaign during which it tried to warn young girls about potential dangers, inform about safer ways to be employed abroad and to give some advice how to behave when faced with traffickers in people. At the end of January 2002, the International Organisation of Migration, which is constantly consulting those who have any doubts regarding their decision to go abroad to work on the phone, started the second wave of the informational campaign. There is a video ad against trafficking in women broadcasted by the television. Soon similar information will appear on the radio stations, press, and in the public transport. There are plans to distribute specially prepared leaflets and brochures at schools, branches of the Labour Exchange of Lithuania, and border control posts.

International co-operation

The Republic of Lithuania has signed intergovernmental agreements regarding cooperation in the field of crime control and prevention with 19 states. The Ministry of the Interior has signed departmental agreements with law enforcement institution of 13 Countries. The Police Department under the Ministry of Interior communicates with the law enforcement institutions of foreign countries on the issues related to criminals and the search for the missing people via the channels of the National Bureau of Lithuania of the Interpol. Moreover, the countries, which have signed agreements on legal aid with Lithuania are in touch via the Consular Department of the Ministry of Foreign Affairs.

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Agenda item 102
Advancement of women

Letter dated 15 October 2002 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General

I have the honour to write to you in connection with your report entitled "Working towards the elimination of crimes against women committed in the name of honour" (A/57/169).

Paragraph 26 of that document reiterates ideas contained in the report submitted by the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, to the Commission at its fifty-eighth session, in which the Argentine Republic is included as one of the countries whose legislative provisions are said to allow for partial or complete defence in cases where it is alleged that a crime has been committed in the name of honour.

If "crimes committed in the name of honour" are understood as crimes in which the perpetrator invokes the need to conceal or efface a stain on his or her honour or that of a spouse or family member as justification, seeking in this way to evade culpability, and as an attenuating circumstance leading to a reduction of sentence or even as a cause of inimputability, then I wish to inform you that Argentine legislation does not envisage this circumstance.

Article 80 of the Penal Code imposes a longer sentence, aggravated by the existence of a family tie, on "anyone who knowingly kills his or her parent, child or spouse". The attenuating circumstance envisaged in Argentine legislation is the so-called "state of violent emotion" in which the person committing the crime is not aware of the seriousness of the act because of a temporary psychic impairment. Violent emotion functions as an attenuating circumstance leading to a reduction of sentence for the crime of homicide in accordance with article 81, paragraph 1, of the Penal Code, and in certain situations may even lead to the inimputability of the actor. This attenuating circumstance must certainly be demonstrated at the evidentiary stage and through expert testimony in the trial; it is on this basis that the judge will determine whether violent emotion was present or whether intention or premeditation went into the commission of the act. It should be noted that the

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attenuating circumstance of violent emotion is applicable whether the defendant is a man or a woman.

In the past there have been isolated cases in Argentina in which the attenuation of sentence was based on protecting the honour of the victim or that of his or her family; the most recent of these cases dates from 1962. Such judgements were the result of ideas and mindsets that have been evolving mainly as a result of the international movement in defence of women's human rights, which during the 1980s led to the ratification in Argentina of the principal international human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination against Women; all of these instruments have had constitutional ranking since 1994. Thus, since the 1970s and 1980s, situations of this type have disappeared from judicial precedents.

This change of mindset has also contributed to the evolution of the concept of chastity into the concept of "sexual integrity". That is to say, contemporary Argentine penal legislation provides an adequate notion of sexual assault by conceptualizing it as an insult to the victim's integrity, and not as an affront to purity or to the honour of any male, an interpretation to which the previous wording might have given rise.

It should be noted, moreover, that on 16 August 2002 Argentina submitted its fourth and fifth report to the Committee on the Elimination of Discrimination against Women, and at no time did the Committee point out to Argentina any supposed legislative error in this regard.

For the foregoing reasons, attention is drawn in particular to the ambiguity of the concepts used by the Special Rapporteur and the disregard of Argentine legislation, as well as the fact that the sources that provided such information are not identified. We regret the reiteration of these ideas in document A/57/169.

I should be grateful if you would have this letter circulated as a document of the General Assembly under agenda item 102.

(*Signed*) Arnoldo M. **Listre**
Ambassador
Permanent Representative

United Nations A/C.3/57/5

General Assembly

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Fifty-seventh session
Third Committee
Agenda item 109 (c)
Human rights questions: human rights situations and reports of special rapporteurs and representatives

Letter dated 23 October 2002 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a memorandum concerning the situation of human rights in Myanmar (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 109 (c).

(*Signed*) Kyaw Tint **Swe**
Permanent Representative

02-66078 (E) 011102

Annex to the letter dated 23 October 2002 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

Memorandum on the situation of human rights in Myanmar

I Introduction

At its fifty-sixth session, the General Assembly adopted resolution 56/231 of 24 December 2001, on the "Situation of human rights in Myanmar". As in previous resolutions, this resolution reflected in the main the unsubstantiated allegations emanating from groups opposed to the government and the politically biased report of a former Human Rights Special Rapporteur, Mr. Lallah, who never visited the country. The necessity to retain the allegations based on previous reports are therefore questionable because the present Human Rights Rapporteur Professor Paulo Sergio Pinheiro has visited Myanmar four times, has travelled widely, interviewed scores of people and submitted reports to relevant United Nations Bodies.

Positive developments which had occurred in Myanmar and the positive measures taken by the government were not given due recognition in the resolution. The true evolving situation of human rights in Myanmar could not therefore be reconciled with the unrealistic, selective and subjective resolution. Myanmar had no alternative but to reject the unfounded allegations contained therein and dissociated itself from the resolution.

Pursuant to resolution 56/231, the current session will continue its consideration of the situation of human rights in Myanmar. This Memorandum provides factual information in order to rectify any misperceptions that may still persist. It focuses on areas addressed in the resolution and where significant positive developments have materialized.

II Political situation

The Government of Myanmar is fully committed to the establishment of a multi-party democracy with firm foundations. The Government and people of Myanmar recall the bitter experience of instability and armed insurrections for over forty years under various political systems and an economy that failed under 25 years of central planning.

In 1988 Myanmar suffered through months of terrible riots, looting, social anarchy and even mob inspired executions before security and stability could be restored. No one in Myanmar wishes to go through that ordeal again. The Government therefore takes the issue of political instability most seriously as the nation steadily evolves towards the aspired goal of a stable multi-party democratic system.

Mindful of the negative consequences of ill-prepared transition, firm foundations are being laid down in orderly continuous measured steps. The transition process is moving forward. The pace of change can only be determined by the people of Myanmar. The international community can best assist by encouraging the process, including a reconciliation that should be "home grown".

The persevering efforts of the government are showing positive results. For the first time in over half a century the armed conflicts which had plagued Myanmar ever since independence have now ceased in almost all parts of the country and is now limited to a few border areas. Myanmar is now

enjoying unprecedented peace. In the report submitted after his third mission to Myanmar from 11-19 February 2002, Special Rapporteur Professor Paulo Sergio Pinheiro commended the long, patient efforts by the Government and seventeen armed ethnic groups to reach separate cease-fire agreements. He identified the first dividend of these cease-fire agreements as peace, and the second as development. Achievement of peace with seventeen armed insurgent groups that had been ravaging the various regions of the country for more than four decades is in fact the most crucial part of the national reconciliation process.

With this restoration of a peaceful and stable environment the government has seized the opportunity to invest in infrastructure for the country. One hundred and thirty six new dams, 32 power plants, 145 bridges including nine largescale bridges across major rivers, nearly 4,230 miles of road and 1,000 miles of railroad have been built. New transport facilities, including a container terminal in Yangon and a modern international airport in Mandalay were constructed. The wide gap has been significantly narrowed between the rural areas, where the majority live, and the main urban areas.

In Myanmar, where 135 national races have lived together for over a thousand years, the Union Spirit of Myanmar has been rekindled. This has enabled the Government to embark on the next step of the national reconciliation process. Since the contacts and meetings started between leaders of Government and the NLD party, one of the ten political parties that are officially registered in the country, the political climate in Myanmar has steadily improved. Cooperation rather than confrontation has been promoted. In a government news release of 6 May 2002, the authorities stated "we shall recommit ourselves to allowing all our citizens to participate freely in the life of our political process, while giving priority to national unity, peace and stability of the country as well as the region".

As a consequence, all restrictions on Daw Aung San Suu Kyi of the NLD were lifted on the same day and she has since been travelling in the country and viewing firsthand some of the vast government infrastructure development projects as well as United Nations projects. During the various trips, the government extended all courtesies to her. She is freely interacting with the press, media and civil society as well as with the diplomatic community and United Nations agencies.

Over 700 detainees and prisoners have been released on humanitarian grounds and it has been pledged that those who are considered to cause no harm to the community nor threaten the existing peace and stability of the nation shall continue to be released.

The Spokesman for the UN Secretary-General in issuing a statement on 6 August 2002, on the completion of Special Envoy Mr. Razali Ismail's eighth mission, expressed the Special Envoy's belief that "the national reconciliation process would continue to evolve positively and in a way that corresponds with the 'Spirit' of the home grown process that has developed thus far". The statement further emphasized Mr. Razali's hope that "the international community will nurture and encourage this process and respond appropriately".

Special Rapporteur Professor Paulo Sergio Pinheiro in his oral statement at the 58th Session of the Commission on Human Rights on 28 March 2002 stated, "If the international community wants to see political and human rights progress taking place, it should support the efforts underway in a spirit of principled engagement."

III Cooperation with the United Nations

A. Cooperation with the Special Rapporteur

Myanmar practices a consistent policy of cooperation with the United Nations. The firm belief of Myanmar in the purposes, principles and ideals of the United Nations motivates this policy.

Myanmar has cooperated with the United Nations in the area of human rights by providing necessary information requested by the UN bodies such as the Commission on Human Rights, the thematic working groups as well as thematic rapporteurs.

The Government of Myanmar accepted the first visit of Special Rapporteur Professor Paulo Sergio Pinheiro from 3 to 5 April 2001. The Government extended all assistance to the Special Rapporteur to facilitate his work and in fulfilling all his specific requests. The Special Rapporteur formally acknowledged the full cooperation he had received. Despite the short duration of his visit, the Special Rapporteur could meet with many personalities, including Daw Aung San Suu Kyi of the NLD party.

In October 2001, the Special Rapporteur visited Myanmar for the second time. The Government had made detailed arrangements to facilitate his request for meetings as well as for trips to areas of his expressed interest. Originally planned for 12 days the visit was shortened by 2 days due to a medical problem of the Special Rapporteur. He was again able to meet with a wide range of individuals and organizations, including government officials, leaders of various political parties, including the NLD party, leaders of ethnic groups, representatives of UN Agencies and international civil society organizations.

The Special Rapporteur visited Myanmar for the third time from 11 to 19 February 2002. During this visit he continued to receive the same level of full and unhindered cooperation on the part of the Myanmar Government, for which he expressed sincere appreciation. He was able to complete his full programme and enjoyed freedom of movement and access to private persons and to others of interest, including security detainees and convicted prisoners. Acceding to a request by the Special Rapporteur, 318 women prisoners were released on humanitarian grounds.

Contrary to accusations by dissident groups, the Special Rapporteur confirmed in his report that none of the persons whom he had privately met and interviewed during his missions in Myanmar were subjected to any form of harassment or reprisal.

In the concluding observations of his report on the mission, the Special Rapporteur, noted among other points, that "in the delicate juncture in Myanmar new prospects for reconciliation and democratization needed to be handled with great care and generosity on the part of all those who wish the Myanmar people well".

On each and every visit the government extended full cooperation to the Special Rapporteur to enable him gain a wider and objective assessment of the situation of human rights in the country.

Special Rapporteur Professor Pinheiro is visiting Myanmar for the fourth time from 17 to 28 October 2002.

B. Invitation extended to the UN High Commissioner for Human Rights

The Government warmly welcomed the appointment of the new United Nations High Commissioner for Human Rights, Mr. Sergio Vieira de Mello. The Government also extended an invitation to the High Commissioner to visit Myanmar at a mutually convenient time to witness the ongoing progress of human rights efforts in Myanmar. The High Commissioner has accepted the invitation.

C. Continued cooperation with the Special Envoy of the Secretary-General

The Government of Myanmar continued its dialogue and cooperation with the United Nations Secretary-General through his Special Envoy, Mr. Razali Ismail. Mr. Razali, who was appointed Special Envoy in April 2000, has visited Myanmar for a total of eight times. His eighth visit was in August 2002. During his five-day mission Mr. Razali met separately with Government leaders including General Khin Nyunt, Secretary-1 of the State Peace and Development Council, and leaders of the National League for Democracy including Daw Aung San Suu Kyi. The Special Envoy also met with leaders of several ethnic nationality parties.

In a statement issued by the spokesman for the UN Secretary-General following the five-day visit, Mr. Razali expressed his belief that "the national reconciliation process would continue to evolve positively and in a way that corresponded with the 'Spirit' of the home grown process that had developed thus far".

The statement also said that the Special Envoy had been informed by Daw Aung San Suu Kyi that "as a result of her recent travels in the country, she was willing to cooperate with the Government in a way that directly benefit all the people of Myanmar and would contribute to the evolution of a democratic state".

Mr. Razali expressed the hope that the international community would "nurture and encourage the national reconciliation process and respond appropriately".

Mr. Razali is scheduled to make his ninth visit to Myanmar from 12 to 15 November 2002.

D. Cooperation with the International Labour Organization

Myanmar inherited two labour laws, the Village Act and Towns Act of 1907, when it regained its independence from Britain in 1948. The use of civilian labour under these Acts was alleged to be forced labour and to be in conflict with Convention 29 of the ILO, despite being governed by rules and regulations guaranteeing proper treatment and adequate payment. This led to the establishment of a Commission of Inquiry by the International Labour Organization in 1997.

The Myanmar Government dissociated itself from the Inquiry Commission and its report and recommendations as it viewed these as being inspired by powerful forces with a politically motivated anti-Myanmar agenda.

Although Myanmar dissociated itself from the resolution of the 88th Session of the International Labour Conference, it felt obliged as a responsible ILO member to cooperate with the Organization in seeking for a solution to the issue. As a result, an ILO Technical Cooperation Mission visited Myanmar three times during 2001-2002, at the invitation of the Government.

As a sign of growing confidence and cooperation between Myanmar and the ILO, a high-level team of the ILO, led by a former Governor-General of Australia, Sir Ninian Stephen and eminent persons of the Philippines, Sri Lanka, and Poland as members, paid a successful three-week visit to Myanmar in September and October 2001. The Chairman of the State Peace and Development Council, Senior General Than Shwe, himself received Sir Ninian and members of his team.

In fulfillment of its commitment to address the issue, Myanmar has taken the necessary legislative, executive and administrative measures to prohibit forced labour including the issuance of two legislative Orders thereby bringing the Towns Act and Village Act in line with Convention 29. The government is also meting out severe penalties to those violating these legislative Orders.

On 19 March 2002 an agreement between Myanmar and the ILO on the appointment of a Liaison Officer in Myanmar was signed in Geneva. On 6 August the Director-General of the ILO announced the appointment of Ms. Hong-Trang Perret-Nguyen as ILO Liaison Officer in Myanmar.

The Government has also invited a High Level Technical Cooperation Mission from the ILO to visit Myanmar in the near future.

These positive developments as well as the comprehensive measures taken to ensure the elimination of forced labour, should leave no room for doubt about the firm commitment of the Government of Myanmar to resolve this issue.

IV Initiative on human rights

A 20-member Human Rights Committee with the Minister for Home Affairs as Chairman was formed in April 2000. The Committee has since held a series of human rights workshops with the cooperation and assistance of the Australian Government. These workshops disseminate information on human rights standards for public officials. The dissemination process is being widened to benefit a greater range of citizens.

The first international seminar on the Rights of the Child was held in Yangon in November 2001 in cooperation with the Centre for Humanitarian Dialogue and the International Institute for the Rights of the Child of Switzerland.

In June 2002, the Government submitted its Second Report on the Implementation of the Convention on the Rights of the Child.

In August 2002, the Human Rights Committee held a seminar on the International Covenant on Economic, Social and Cultural Rights, for the benefit of Government officials.

The initiative also includes awareness raising activities such as the Mine Awareness Workshop held in February 2002 with support from the Australian Government and the Mine Advisory Group based in the UK. In March 2002 general human rights workshops were held for law enforcement personnel.

V Efforts at health promotion

The Government is committed to strengthening the country's health system in order to meet the needs of the people. It is making every effort with its available resources to ensure equitable access to primary health services, even in the remote areas. Since 1988, one hundred and eleven new hospitals have been opened nationwide.

The Government is seriously committed to fighting the spread of HIV/AIDS and is addressing the issue as a matter of priority. HIV/AIDS has been designated as a disease of national concern. A high-level multisectoral National AIDS Committee, chaired by the Minister for Health, was formed in 1989 to oversee the National AIDS Programme in Myanmar. The National Health Committee, the highest policy-making body, provides policy guidance and necessary assistance to enhance HIV/AIDS prevention and control activities in the country.

Despite limited international assistance, Myanmar has adopted a comprehensive HIV/AIDS prevention and control programme. In early 2001, the National AIDS Programme and the Joint United Nations Programme on HIV/AIDS drafted a joint plan of action for the prevention and control of HIV/AIDS in the country. It is a comprehensive plan, covering all aspects: education, prevention, cure and rehabilitation. Myanmar stands ready to cooperate with international donors both bilaterally and multilaterally to combat this global menace.

Myanmar has been elected to serve on the UNAIDS Coordination Programme Board beginning January 2003, thereby enabling Myanmar to address the issue on both the national and international level.

VI National efforts for the promotion of the education sector

The Government has consistently given priority to the education sector since its assumption of State responsibilities. As a matter of priority, the Government concentrated on the building of educational infrastructure to create equal opportunity for children to fulfill the right to education. Over 5,000 primary schools, 425 middle schools, 240 high schools and 128 colleges and universities have been newly established since 1988. In May 2002, as a result of the nationwide school enrollment campaign, a total of 1.23 million children registered in kindergarten classes thereby reaching 93.7 per cent enrollment of the nation's school age children.

VII Economic situation

The efforts of the Government in the economic sector are primarily aimed at ensuring equitable development of the peoples of Myanmar. It aims at narrowing the development gap between the rural and urban areas. Over 70 per cent of the population of 52 millions live in the rural areas.

In 1988 the centrally planned socialist economy was discarded in favour of a market oriented economic model. The Government's efforts are directed at creating an infrastructure and environment under which the economy can develop.

The Government inherited a rapidly deteriorating economy in 1988 with very low monetary reserves. The political turmoil in that year left in its wake a completely devastated country in material terms. The civil administration structure was in complete disarray. Compounding the problems, western countries and multilateral financial institutions suspended official development assistance, loans and grants since 1989. Unilateral sanctions were applied and investments discouraged. Travel to the country was also discouraged so as to deter tourism, a promising source of income for the people. This situation left very little room to revitalize the country's economy. In spite of these constraints, the economy continues to grow considerably.

The sustained economic growth over the recent years contributed to a better quality of life for the majority of the population. While unjustified criticism of the Government continues, the Government has been able to make perceptible progress in its efforts for the all-round development of the country. The fact that, since 1999, Myanmar has been upgraded from the category of countries enjoying low development to the medium human development category in the human development index of the United Nations Development Programme reflects this progress.

VIII Unfounded allegations

Recently some remaining splinter groups of former armed insurgencies and well-funded exile groups, having chosen to remain outside of the mainstream reconciliation process, have started a negative media campaign using fabricated allegations by well orchestrated groups of insurgent families and military deserters to slander and discredit the government and to derail the national reconciliation process.

Allegations of rape in the Shan State by the armed forces were put out by organizations based in a neighbouring country with malicious intent to cause disunity in Myanmar. Three independent organizations from Myanmar conducted separate investigations and found that the allegations are untrue. The findings have already been made public. The Special Rapporteur Mr. Pinheiro has been invited to look into the issue in the course of his visit in October 2002.

A report recently issued by Human Rights Watch alleges that the Myanmar armed forces has the largest number of child soldiers in the world. The preposterous figure of 70,000 in the report is seen to be derived from the statements of 25 or so military deserters with dubious credibility. The actual point of fact is that the use of child soldiers is firmly prohibited both in law and in practice.

Under the Myanmar Defence Services Act of April 1974 and War Office Regulation 13/73, a person cannot be enlisted into the armed forces unless he has attained the age of 18. This regulation is

strictly enforced. Moreover, the Myanmar Armed Forces is a purely voluntary army and those entering the military service do so of their own free will. There is neither a draft system nor forced conscription in the country.

IX Conclusion

With the improving political climate in the country, the Government of the Union of Myanmar has been able to take a series of positive steps. As a country undergoing a complex transitional process, many challenges remain. All the positive developments mentioned above are a clear demonstration of the Government's commitment to overcoming all of the challenges. It is hoped that the international community will give due recognition to the positive developments in Myanmar and encourage the process appropriately.

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Elimination of racism and racial discrimination

Letter dated 24 October 2002 from the Chargé d'affaires a.i. of Mali to the United Nations addressed to the Secretary-General

I have the honour to transmit to you herewith the text of the statement of the Government of the Republic of Mali dated 22 October 2002 in response to the distressing events that have been taking place in the Republic of Côte d'Ivoire since 19 September 2002 (see annex).

I should be grateful if you would have the text of this letter and its annex circulated as a document of the United Nations.

(*Signed*) Cheickna **Keita**
Chargé d'affaires a.i.

02-66508 (E) 301002 011102

Annex to the letter dated 24 October 2002 from the Chargé d'affaires a.i. of Mali to the United Nations addressed to the Secretary-General

Statement of the Government of the Republic of Mali

1. The distressing events that have been taking place in the Republic of Côte d'Ivoire since 19 September 2002 have been and continue to be a matter of concern to the Government of Mali at the highest level.

2. In that context, the Government of Mali has spared no effort in the quest for a peaceful solution to the crisis. It has, moreover, taken measures to provide humanitarian assistance to the displaced communities and the refugees.

3. The deterioration of the situation that has occurred recently has taken the form of violence, atrocities, disappearances and even the death of people within the Malian community living in Côte d'Ivoire, in particular in the Daloa region. In view of these atrocities, the Government of the Republic of Mali expresses its indignation and protests in the strongest terms to the Ivorian authorities.

4. The protection of the life and property of foreign communities, in particular Malian nationals, is a duty for the Ivorian Government which has subscribed to the corresponding commitments in the framework of the WAEMU and ECOWAS agreements. For its part, the Malian Government attaches the utmost importance to the safety of the Malian communities residing in Côte d'Ivoire and looks to the Ivorian authorities fully to investigate the events that have occurred in Daloa and elsewhere, and to take action against the perpetrators of such acts.

5. The Government of Mali requests the Ivorian authorities to take all essential measures for the protection and security of foreign communities, and of Malian citizens in particular, and of their property.

Bamako, 22 October 2002